

INSTRUCTION NO. _____

In order for the defendant to be guilty of Possession of Marijuana, the state must prove:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] possessed marijuana, and
4. knew it was marijuana.

If any of the above has not been proven beyond a reasonable doubt, then you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, you must find the defendant guilty.

[If you find the defendant guilty of Possession of Marijuana, you must next decide whether the state has proved beyond a reasonable doubt the defendant possessed more than three (3) ounces. You will answer this question on the verdict form, and your answer must be unanimous.]

Comment

I.C. § 37-2732(c)(3) & I.C. § 37-2732(e). Use special verdict form ICJI 222 or 224 to answer the special question presented by the last, bracketed paragraph when the questions is in issue.

If the defendant is charged with “second offense” possession of marijuana, I.C. § 37-2739, that issue should be presented in a bifurcated proceeding as provided in ICJI 1601.

In State v. Fox, 124 Idaho 924, 866 P.2d 181 (1993), the Supreme Court held that I.C. § 37-2732(c) does not set forth any mental state as an element of the crime of possession of a controlled substance. “Thus, as [this statute] does not expressly require any mental element and I.C. § 18-114 only requires a general intent, we conclude that the offense only requires a general

intent, that is, the knowledge that one is in possession of the substance.” The Court held that the defendant’s lack of knowledge that the substance was illegal (as a controlled substance) was irrelevant.

In State v. Blake, 133 Idaho 237, 985 P.2d 117 (1999), the Supreme Court held that instructing the jury that the defendant knew of “should have known” what the substance was constituted error as it allowed the jury to convict on a negligence standard and was inconsistent with the court’s holding in Fox that knowledge that one is in possession of the substance is an essential element of the offense.

ICJI 403
POSSESSION OF A CONTROLLED
SUBSTANCE/POSSESSION WITH
INTENT TO DELIVER/
POSSESSION WITH INTENT TO
MANUFACTURE

INSTRUCTION NO. ____

In order for the defendant to be guilty of Possession of a Controlled Substance, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] possessed [name of substance], and
4. the defendant knew it was [name of substance].

If any of the above has not been proven beyond a reasonable doubt, then you must find defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

[If you find the defendant guilty of Possession of a Controlled Substance, you must next decide whether the state has proved beyond a reasonable doubt the defendant intended to deliver or furnish the substance to another. You will answer this question on the verdict form, and your answer must be unanimous.]

If you find the defendant guilty of Possession of a Controlled Substance, you must next decide whether the state has proved beyond a reasonable doubt the defendant intended to manufacture the substance. You will answer this question on the verdict form, and your answer must be unanimous.]

Comment

I.C. § 37-2732(a). For a charge of simple possession, use all but the last two bracketed paragraphs and use verdict form ICJI 220. Include the paragraph where the charge is of possession with a special intent and use special verdict form ICJI 222 or 224. If the charge is possession of a controlled substance by an inmate, see ICJI 604.

If the defendant is charged with “second offense” drug possession, I.C. § 37-2739, that issue should be presented in a bifurcated proceeding as provided in ICJI 1601.

In State v. Fox, 124 Idaho 924, 866 P.2d 181 (1993), the Supreme Court held that I.C. § 37-2732(c) does not set forth any mental state as an element of the crime of possession of a controlled substance. “Thus, as [this statute] does not expressly require any mental element and I.C. § 18-114 only requires a general intent, we conclude that the offense only requires a general intent, that is, the knowledge that one is in possession of the substance.” The Court held that the defendant’s lack of knowledge that the substance was illegal (as a controlled substance) was irrelevant.

In State v. Blake, 133 Idaho 237, 985 P.2d 117 (1999), the Supreme Court held that instructing the jury that the defendant knew of “should have known” what the substance was constituted error as it allowed the jury to convict on a negligence standard and was inconsistent with the court’s holding in Fox that knowledge that one is in possession of the substance is an essential element of the offense.

ICJI 404

DELIVERY OF A CONTROLLED SUBSTANCE

INSTRUCTION NO. ____

In order for the defendant to be guilty of Delivery of a Controlled Substance, the state must prove each of the following:

In order for the defendant to be guilty of Possession of a Controlled Substance, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] delivered [name of substance] to another, and
4. the defendant knew it was [name of substance].

If any of the above has not been proven beyond a reasonable doubt, then you must find defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 37-2732(a). If the charge is delivery of a controlled substance by an inmate, see ICJI 604.

If the defendant is charged with “second offense” drug delivery, I.C. § 37-2739, that issue should be presented in a bifurcated proceeding as provided in ICJI 1601.

In State v. Fox, 124 Idaho 924, 866 P.2d 181 (1993), the Supreme Court held that I.C. § 37-2732(c) does not set forth any mental state as an element of the crime of possession of a controlled substance. “Thus, as [this statute] does not expressly require any mental element and I.C. § 18-114 only requires a general intent, we conclude that the offense only requires a general intent, that is, the knowledge that one is in possession of the substance.” The Court held that the defendant’s lack of knowledge that the substance was illegal (as a controlled substance) was irrelevant.

In State v. Blake, 133 Idaho 237, 985 P.2d 117 (1999), the Supreme Court held that instructing the jury that the defendant knew of “should have known” what the substance was constituted

error as it allowed the jury to convict on a negligence standard and was inconsistent with the court's holding in Fox that knowledge that one is in possession of the substance is an essential element of the offense.

POSSESSION OF A COUNTERFEIT SUBSTANCE WITH INTENT TO DELIVER

INSTRUCTION NO. ____

In order for the defendant to be guilty of Possession of a Counterfeit Substance with Intent to Deliver, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] possessed [name of substance],
4. the defendant knew it was a counterfeit substance, and
5. the defendant intended to deliver or furnish the substance to another.

If any of the above has not been proven beyond a reasonable doubt, then you must find defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 37-2732(b). See ICJI 424 for the definition of a counterfeit substance.

If the defendant is charged with “second offense” drug possession, I.C. § 37-2739, that issue should be presented in a bifurcated proceeding as provided in ICJI 1601.

In State v. Fox, 124 Idaho 924, 866 P.2d 181 (1993), the Supreme Court held that I.C. § 37-2732(c) does not set forth any mental state as an element of the crime of possession of a controlled substance. “Thus, as [this statute] does not expressly require any mental element and I.C. § 18-114 only requires a general intent, we conclude that the offense only requires a general intent, that is, the knowledge that one is in possession of the substance.” The Court held that the defendant’s lack of knowledge that the substance was illegal (as a controlled substance) was irrelevant.

In State v. Blake, 133 Idaho 237, 985 P.2d 117 (1999), the Supreme Court held that instructing the jury that the defendant knew of “should have known” what the substance was constituted error as it allowed the jury to convict on a negligence standard and was inconsistent with the court’s holding in Fox that knowledge that one is in possession of the substance is an essential element of the offense.

[Revised March 2004]

ICJI 414

DELIVERY OF A COUNTERFEIT SUBSTANCE

INSTRUCTION NO. ____

In order for the defendant to be guilty of Delivery of a Counterfeit Substance, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] delivered a substance to another, and
- [4. the defendant knew the substance was a counterfeit substance.]
- [4. the defendant falsely represented the substance not to be a counterfeit substance.]

If any of the above has not been proven beyond a reasonable doubt, then you must find defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 37-2732(b). See ICJI 424 for the definition of counterfeit substance. If the defendant is charged with “second offense,” I.C. § 37-2739, that issue should be presented in a bifurcated proceeding as provided in ICJI 1601.

In State v. Fox, 124 Idaho 924, 866 P.2d 181 (1993), the Supreme Court held that I.C. § 37-2732(c) does not set forth any mental state as an element of the crime of possession of a controlled substance. “Thus, as [this statute] does not expressly require any mental element and I.C. § 18-114 only requires a general intent, we conclude that the offense only requires a general intent, that is, the knowledge that one is in possession of the substance.” The Court held that the defendant’s lack of knowledge that the substance was illegal (as a controlled substance) was irrelevant.

In State v. Blake, 133 Idaho 237, 985 P.2d 117 (1999), the Supreme Court held that instructing the jury that the defendant knew of “should have known” what the substance was constituted error as it allowed the jury to convict on a negligence standard and was inconsistent with the court’s holding in Fox that knowledge that one is in possession of the substance is an essential element of the offense.

[Revised March 2004]

ICJI 415

POSSESSION OF A SIMULATED CONTROLLED SUBSTANCE/
POSSESSION WITH INTENT TO DELIVER

INSTRUCTION NO. ____

In order for the defendant to be guilty of Possession of a Simulated Controlled Substance, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] possessed [name of substance], and
4. the defendant knew it was a simulated controlled substance.

If any of the above has not been proven beyond a reasonable doubt, then you must find defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

[If you find the defendant guilty of Possession of a Simulated Controlled Substance, you must next decide whether the state has proved beyond a reasonable doubt the defendant intended to distribute the substance to another. You will answer this question on the verdict form, and your answer must be unanimous.]

Comment

I.C. § 37-2732(g). For a charge of simple possession, use all but the last bracketed paragraph and use verdict form ICJI 220. Include the paragraph where the charge is of possession with a special intent and use special verdict form ICJI 222 or 224. If the charge is possession of a controlled substance by an inmate, see ICJI 604.

See ICJI 425 for the definition of a simulated controlled substance.

If the defendant is charged with “second offense” drug possession, I.C. § 37-2739, that issue should be presented in a bifurcated proceeding as provided in ICJI 1601.

In State v. Fox, 124 Idaho 924, 866 P.2d 181 (1993), the Supreme Court held that I.C. § 37-2732(c) does not set forth any mental state as an element of the crime of possession of a controlled substance. “Thus, as [this statute] does not expressly require any mental element and I.C. § 18-114 only requires a general intent, we conclude that the offense only requires a general intent, that is, the knowledge that one is in possession of the substance.” The Court held that the defendant’s lack of knowledge that the substance was illegal (as a controlled substance) was irrelevant.

In State v. Blake, 133 Idaho 237, 985 P.2d 117 (1999), the Supreme Court held that instructing the jury that the defendant knew of “should have known” what the substance was constituted error as it allowed the jury to convict on a negligence standard and was inconsistent with the court’s holding in Fox that knowledge that one is in possession of the substance is an essential element of the offense.

ICJI 416

DISTRIBUTION OF A SIMULATED CONTROLLED SUBSTANCE

INSTRUCTION NO. ____

In order for the defendant to be guilty of Distribution of a Simulated Controlled Substance, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] distributed a substance to another, and
- [4. the defendant knew it was a simulated controlled substance.]
- [4. the defendant falsely represented the substance not to be a simulated substance.]

If any of the above has not been proven beyond a reasonable doubt, then you must find defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 37-2732(g). If the charge is delivery of a controlled substance by an inmate, see ICJI 604.

See ICJI 425 for the definition of a simulated controlled substance.

In State v. Fox, 124 Idaho 924, 866 P.2d 181 (1993), the Supreme Court held that I.C. § 37-2732(c) does not set forth any mental state as an element of the crime of possession of a controlled substance. “Thus, as [this statute] does not expressly require any mental element and I.C. § 18-114 only requires a general intent, we conclude that the offense only requires a general intent, that is, the knowledge that one is in possession of the substance.” The Court held that the defendant’s lack of knowledge that the substance was illegal (as a controlled substance) was irrelevant.

In State v. Blake, 133 Idaho 237, 985 P.2d 117 (1999), the Supreme Court held that instructing the jury that the defendant knew of “should have known” what the substance was constituted error as it allowed the jury to convict on a negligence standard and was inconsistent with the court’s holding in Fox that knowledge that one is in possession of the substance is an essential element of the offense.

[Revised March 2004]

ICJI 987

REQUIREMENT AND DURATION FOR REGISTRATION AS A SEX OFFENDER

INSTRUCTION NO. ____

A person who is required to register under the Sex Offender Registration Act must do so for life.

The defendant would have been required to register under the Sex Offender Registration Act if [:]

[after June 30, 1993, the defendant had pled guilty to or had been found guilty of [an attempt] [solicitation] [a conspiracy] [to commit] a violation of Idaho Code Section [state crime]] [;or]

[the defendant entered Idaho after June 30, 1993, and prior to entering Idaho the defendant had pled guilty to or had been found guilty of [an attempt] [solicitation] [a conspiracy] [to commit] a crime in [another state] [a territory] [a commonwealth] [any other jurisdiction] of the United States that is substantially equivalent to a violation of Idaho Code section [state crime]] [;or]

[prior to July 1, 1993, the defendant had pled guilty to or had been found guilty of [an attempt] [solicitation] [a conspiracy] [to commit] a violation of Idaho Code section [state crime]] and as a result of that offense the defendant was [incarcerated in a [county jail] [penal facility] [under [probation] [parole] supervision] after June 30, 1993].

Comment

I.C. § 18-8304.

[Revised March 2004]

INSTRUCTION NO. ____

In order for the defendant to be guilty of Domestic Battery, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
- [3. the defendant [name] willfully and unlawfully,
4. used force or violence upon [name of victim]
5. while the defendant and [name of victim] were household members.]

[or]

- [3. the defendant [name] actually, intentionally and unlawfully,
4. touched or struck [name of victim],
5. against [name of victim]'s will,
6. while the defendant and [name of victim] were household members.]

[or]

- [3. the defendant [name] unlawfully and intentionally,
4. caused bodily harm to [name of victim]
5. while the defendant and [name of victim] were household members.]

If any of the above has not been proven beyond a reasonable doubt, then you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, you must find the defendant guilty.

“Household member” means a person who is a spouse, former spouse, or a person who has a child in common regardless of whether they have been married or a person with whom the person is cohabitating, whether or not they have been married or have held themselves out to be husband and wife.

Comment

I.C. § 18-903; I.C. § 18-918(1) & (3).

ICJI 1000
DRIVING WHILE UNDER THE INFLUENCE

INSTRUCTION NO. ____

In order for the defendant to be guilty of Driving Under the Influence the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name], [drove] [or] [was in actual physical control of]
4. a [commercial] motor vehicle
5. upon a highway, street or bridge or upon public or private property open to the public,
6. [while under the influence of (alcohol) (drugs) (an intoxicating substance).]

[or]

[while having an alcohol concentration of .02 or more as shown by analysis of the defendant's (blood) (urine) (breath).]

[or]

[while having an alcohol concentration of 0.08 or more as shown by analysis of the defendant's (blood) (urine)(breath).]

[or]

[while having an alcohol concentration of 0.04 or more as shown by analysis of the defendant's (blood)(urine)(breath).]

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, you must find the defendant guilty.

Comment

I.C. § 18-8004.

State v. Andrus, 118 Idaho 711, 800 P.2d 107 (Ct. App. 1990); State v. Hartwig, 112 Idaho 370, 732 P.2d 339 (Ct. App. 1987); State v. Cheney, 116 Idaho 917, 782 P.2d 40 (Ct. App. 1989); Schad v. Arizona, ___U.S.___, 111 S. Ct. 2491, 115 L.Ed.2d 555 (1991).